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UNITED STATES DISTRICT COURT  
 NORTHER DISTRICT OF CALIFORNIA

WILLIE BENTON,	)	Case No. CV08-1073 SBA
	)	
Plaintiffs,	)	
	)	
vs.	)	CERTIFICATE OF COUNSEL WHY
	)	THIS CIVIL ACTION SHOULD NOT
	)	BE DISMISSED FOR FAILURE TO
ALAMEDA-CONTRA COSTA	)	PROSECUTE
TRANSIT DISTRICT, et al,	)	
	)	
Defendants.	)	Date: July 9, 2008
	)	Time: 4:00 p.m.
	)	Ctrm: 3 Oakland

Plaintiff WILLIE BENTON submits the following Certificate of Counsel in response to the Order to Show Cause (Docket #18) why this case should not be dismissed for failure to prosecute.

**CERTIFICATE OF COUNSEL**

I, Howard Moore, Jr., hereby certify that:

1. I am counsel of record for Plaintiff Willie Benton and an active member of the Bar of this Court. I make this Certificate to offer in response to the Order to Show Cause why this civil action should not be dismissed for failure to prosecute.

2. The instant Order to Show Cause arises from my failure on June 11, 2008, to initiate the call for the Case Management Conference scheduled at 2:45 p.m., between the Court

1 and counsel of record for the parties. My failure to initiate the call is due entirely to my  
2 inadvertence and inattention.

3 **A. Reason Why the Case Management Conference Did Not Go Forward**  
4 **on June 11, 2008.**

5 3. On June 11, I planned to place the call to initiate the Case Management  
6 Conference from my office in Berkeley, using my Internet phone (510.868.8834), which has the  
7 capability for conference calls. However, I had not used it before for that purpose. When I  
8 attempted to initiate the call, I could not do so. As a result, I decided to call my office in Oakland  
9 and arrange to have Ms. Fania E. Davis initiate the call between myself, the Court, and counsel  
10 for Defendant over a land lined telephone. To make sure I had the correct telephone number for  
11 the Court, I mistakenly pulled up the Court's May 22, 2008 Clerk's Notice (Docket #15), which  
12 set the Case Management Conference for June 12, at 3:00 p.m, instead of the June 5 Clerk's  
13 Notice which set the Case Management Conference for June 11, at 2:45 p. m. Because I was not  
14 paying close attention to what I was doing, I thought I was a day early and told Ms. Davis to  
15 forget about it that the Case Management Conference was the next day, June 12. I was distracted  
16 or the victim of wishful thinking because I was also scheduled to appear at 3:00 p.m. on June 11,  
17 at a Case Management Conference in Department 17 of the Alameda County Superior Court, in  
18 the case of *Moore, et al v. Brown, et al*, No. RG07320886, a civil action in which my daughters  
19 are suing a home re-modeler for fraud, among other things.

20 4. When I returned to my office from the Alameda County Superior Court late in the  
21 afternoon on June 11 and heard a message Ms. Cathleen Wadhams, counsel for Defendant, left  
22 for me, I realized my mistake and felt like a fool.

23 5. I apologize to the Court and opposing counsel for the inconvenience my  
24 inadvertence caused. I commit myself to be more attentive in the future to avoid such mistakes.

25 **B. Nature and Status of the Action and It Expected Course**

26 6. This is a civil action to redress age, retaliation, and racial discrimination in  
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1 employment. Since May of 1979, Plaintiff has been employed by Defendant as a mechanic in the  
2 maintenance department. In the fall of 2006, Plaintiff objected to management blaming the  
3 mostly African American mechanics for problems AC Transit was experiencing with buses it  
4 recently acquired from a European manufacturer. Maintenance supervisors, Steve Tracey and  
5 Mike Cordero, retaliated against Plaintiff by assigning him the most difficult and undesirable  
6 jobs; over loading him with assignments; falsely accusing Plaintiff of improperly repairing a bus  
7 which was taken out of service; attempting to fire Plaintiff; and threatening Plaintiff with bodily  
8 harm.

9 7. On February 22, 2008, Plaintiff filed this civil action pro se. On April 22, 2008,  
10 Plaintiff substituted me into the case as his counsel of record (Docket #8).

11 8. On April 28, 2008, this action was reassigned to this Court (Docket #11), after a  
12 declination was filed concerning the magistrate judge to whom the action was originally  
13 assigned.

14 9. On May 19, 2008, the parties filed their Joint Case Management Statement and  
15 (Proposed) Order to set the commencement of trial in this action on May 18, 2009 (Docket #14,  
16 page 4). In their Joint Case Management Statement, the parties agreed to exchange Initial  
17 Disclosures by June 30, and they agreed to conduct written fact discovery and limited deposition  
18 discovery before engaging in an agreed-upon form of ADR before completing any discovery  
19 which remained to be done.

20 10. This action has not been brought to trial solely because the parties have not had  
21 sufficient time in which to prepare it for trial since it was commenced on February 22, 2008, and  
22 reassigned to this Court on April 28, 2008 (Docket #11).

23 11. The initial Case Management Conference has not been conducted due first to the  
24 unavailability of the Court on May 29, 2008, and second my inadvertence and mistake as  
25 described herein on June 11, 2008.

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1 I have personal knowledge of the matters stated herein, and, if I were called as a witness, I  
2 could and would be able to testify competently thereto. The foregoing statement of facts is true  
3 and correct. Executed under penalty of perjury of the laws of the United States, at Berkeley,  
4 California, on June 26, 2008.

5 *s/Howard Moore, Jr.*

6 **HOWARD MOORE, JR.**

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9 **CERTIFICATE OF SERVICE**

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11 I hereby certify that the foregoing document was served on June 26, 2008, on counsel of  
12 record for Defendant by electronic means through this Court's website pursuant to Rule 5(D),  
13 Fed. R. Civ. P.

14  
15 *s/Howard Moore, Jr*  
16 **HOWARD MOORE, JR.**